

CAHILL GORDON & REINDEL LLP
32 OLD SLIP
NEW YORK, NY 10005

DANIEL AMATO
DANIEL R. ANDERSON
PETER J. ARMENIO
HELENE R. BANKS
ANIRUDH BANSAL
LANDIS C. BEST
CHRISTOPHER BEVAN
BROCKTON B. BOSSON
DONNA M. BRYAN
SARAH W. CHEN
EMEKA C. CHINWUBA
JAMES J. CLARK
CHRISTOPHER W. CLEMENT
LEWIS RINAUDO COHEN
AYANO K. CREED
SEAN M. DAVIS
STUART G. DOWNING
ADAM M. DWORKIN
ANASTASIA EFIMOVA
SAMSON A. ENZER
JAMES Z. FANG
GERALD J. FLATTMANN JR.

KIERSTEN A. FLETCHER
HELENA S. FRANCESCHI
JOAN MURTAGH FRANKEL
JONATHAN J. FRANKEL
SESI GARIMELLA
ARIEL GOLDMAN
PATRICK GORDON
JASON M. HALL
STEPHEN HARPER
CRAIG M. HOROWITZ
TIMOTHY B. HOWELL
COLLEEN TRACY JAMES
DAVID G. JANUSZEWSKI
BRIAN S. KELLEHER
ANDREW R. KELLY
RICHARD KELLY
CHÉRIE R. KISER ‡
JOEL KURTZBERG
TED B. LACEY
ANDREW E. LEE
ALIZA R. LEVINE
JOEL H. LEVITIN

TELEPHONE: (212) 701-3000
WWW.CAHILL.COM

1990 K STREET, N.W.
WASHINGTON, DC 20006-1181
(202) 862-8900

221 W. 10th STREET, 3rd FLOOR
WILMINGTON, DE 19801
(302) 884-0000

CAHILL GORDON & REINDEL (UK) LLP
20 FENCHURCH STREET
LONDON EC3M 3BY
+44 (0) 20 7920 9800

WRITER'S DIRECT NUMBER
(212) 701-3708

MARK LOFTUS
JOHN MacGREGOR
TRISTAN E. MANLEY
BRIAN T. MARKLEY
MEGHAN N. McDERMOTT
WILLIAM J. MILLER
EDWARD N. MOSS
JOEL MOSS
NOAH B. NEWITZ
EDWARD C. O'CALLAGHAN
JULIANA OBREGON
JAVIER ORTIZ
DAVID R. OWEN
JOHN PAPACHRISTOS
LUIS R. PENALVER
SHEILA C. RAMESH
MICHAEL W. REDDY
OLEG REZZY
THOMAS ROCHER *
PETER J. ROONEY
MATTHEW E. ROSENTHAL
THORN ROSENTHAL

TAMMY L. ROY
ANDREW SCHWARTZ
DARREN SILVER
JOSIAH M. SLOTNICK
RICHARD A. STIEGLITZ JR.
GREGORY STRONG
SUSANNA M. SUH
SEAN R. TIERNEY
AMIT TREHAN
JOHN A. TRIPODORO
HERBERT S. WASHER
FRANK WEIGAND
MILES C. WILEY
PETER G. WILLIAMS
DAVID WISHENGRAD
C. ANTHONY WOLFE
ELIZABETH M. YAHL

* ADMITTED AS A SOLICITOR IN
ENGLAND AND WALES ONLY
‡ ADMITTED IN DC ONLY

November 6, 2024

VIA ECF

Hon. Arun Subramanian
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

**RE: *Patagon Management LLC v. The Aragon Association et al.*,
No. 1:24-cv-08290-AS (S.D.N.Y.)**

Dear Judge Subramanian,

We represent Aragon Shield Foundation (“ASF”) in the above captioned matter. We write in response to the Court’s November 4, 2024 Order setting an initial pre-trial conference (Dkt. No. 10). We have shared this letter with counsel for Plaintiff who has added in their respective position on certain issues.

ASF submits this letter subject to and explicitly without waiving its objections to venue and personal jurisdiction, which it intends to fully brief as part of its forthcoming Rule 12 motions. As suggested in the Court’s November 4th Order, ASF has agreed to waive service pursuant to Rule 4(d) of the Federal Rules of Civil Procedure; the parties anticipate promptly filing the waiver of service as to ASF.

ASF currently takes no position as to service and/or representation of the three other Defendants in this matter but anticipates that such matters will be resolved in the coming days. Plaintiff’s position is that service of process as to the other Defendants should take place promptly, and Plaintiff has attempted to work with counsel to this effect. With respect to the Aragon Association, undersigned counsel has relayed that (a) the Aragon Association has been dissolved

under Swiss law; (b) Mr. Frisch's firm did represent the Aragon Association as a general matter; but (c) it did not and never had authorization to represent the Aragon Association in this lawsuit. Therefore, undersigned counsel is presently unable to accept service on the Association's behalf, and anticipates that they will be in a position to advise whether they can do so in the coming days, though cannot at this time provide a more precise timing estimate. As for Aragon X and Mr. Cuende, undersigned counsel does not currently represent them and cannot provide a precise timing estimate as to when they will have sufficient clarity for resolving this issue.

With this letter, ASF respectfully requests that the Court:

1. Re-set the initial pre-trial conference to the morning of either December 10, 11, 18, 19, or 20, 2024 (and accordingly re-set the deadline for the parties' submissions in advance of that conference to December 4 or 11, 2024). Plaintiff joins in this request.
2. Grant it relief from the Court's requirement that ASF's "principal decisionmaker" attend the pre-trial conference in person, in light of ASF's assertion that this Court lacks personal jurisdiction over it. In the alternative, ASF requests that the Court allow ASF's principal decisionmaker to attend the initial pre-trial conference virtually. Plaintiff takes no position with respect to this request.

The Parties Jointly Request that the Initial Pre-Trial Conference Be Adjourned to December 10, 11, 18, 19, or 20.

In setting the initial pre-trial conference for November 14, the Court noted that "[i]f this date is infeasible, the parties can suggest other available dates in November or December." (Dkt. No. 10 at 1.)

ASF and Patagon have met and conferred and jointly request, pursuant to Your Honor's Rule of Individual Practice 3.E, that the initial pre-trial conference be adjourned from November 14, 2024 to either the afternoon of December 10 or any time on December 11, 18, 19, or 20, 2024 because November 14 is infeasible. No prior requests for adjournment have been requested. To the extent the Court denies ASF's request to excuse the participation of ASF's principal decision maker (*see infra*), ASF requests that ASF's principal decisionmaker (who resides in Switzerland) be permitted to attend virtually. If the Court requires the parties' principal decisionmakers to attend the initial pre-trial conference in person, ASF may seek further relief in order to coordinate international travel.

Further, consistent with the Court's November 4th Order, ASF and Patagon request that the deadline for the parties' joint letter and Civil Case Management Plan and Scheduling Order be reset correspondingly to the Wednesday of the week prior to the anticipated rescheduled conference date (*i.e.*, to December 4 or December 11, 2024).

ASF Requests That Its Principal Decisionmaker Be Relieved From Having to Attend the Initial Pre-Trial Conference

ASF requests that it be granted relief from the portion of the Court’s Order requiring that its principal decisionmaker attend the initial pretrial conference. As previewed during the November 1, 2024 TRO hearing, it is ASF’s position that this Court lacks personal jurisdiction over it. As described in Plaintiff’s complaint, ASF is a Swiss entity with its headquarters in Switzerland. ASF does not have any offices in the United States and all of its decisionmakers reside in Switzerland. ASF believes that it would be unjust and improper to require that its principal decisionmaker attend a pretrial conference in person, and to force it to expend substantial resources in doing so, prior to a determination that this Court has personal jurisdiction over it. *E.g., Knight v. Standard Chartered Bank*, 531 F. Supp. 3d 755, 764–65 (S.D.N.Y. 2021) (“At the threshold, the Court must determine whether it has subject matter and personal jurisdiction over this action.” (citing *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94–95 (1998) (“The requirement that jurisdiction be established as a threshold matter ‘spring[s] from the nature and limits of the judicial power of the United States’ and is ‘inflexible and without exception.’” (quoting *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884)))); *In re Rationis Enters., Inc. of Pan.*, 261 F.3d 264, 267–68 (2d Cir. 2001) (same); *see also Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577 (1999); *accord. Asahi Metal Indus. Co. v. Superior Ct. of California, Solano Cnty.*, 480 U.S. 102, 114 (1987) (courts must give “significant weight” to “[t]he unique burdens placed upon one who must defend oneself in a foreign legal system” in assessing the reasonableness of the exercise of jurisdiction over a foreign defendant).

As such, ASF respectfully requests that it be granted relief from the Court’s November 4th Order insofar as it requires that ASF’s principal decisionmaker attend the initial pretrial conference in person—ASF requests that the Court modify the Order to require only lead counsel appear in person. In the alternative, ASF requests that the Court permit ASF’s principal decisionmaker to appear remotely and set the initial pretrial conference at such a time as to accommodate the six-hour time difference between New York and Switzerland.

* * *

Pursuant to Section 2.A of the Court’s Individual Practices, Lead Trial Counsel for ASF will be Gregory Mortenson of Cahill Gordon & Reindel LLP. Lead Trial Counsel for Plaintiff will be John R. Hardin of Perkins Coie LLP.

We thank the Court for its attention to this matter.

CAHILL GORDON & REINDEL LLP

-4-

Respectfully submitted,

/s/ Gregory Mortenson

Samson A. Enzer

Gregory Strong (*pro hac vice* forthcoming)

Gregory Mortenson

CAHILL GORDON & REINDEL LLP

32 Old Slip

New York, New York 10005

Telephone: (212) 701-3708

SEnzer@cahill.com

GStrong@cahill.com

GMortenson@cahill.com

Michael Frisch (*pro hac vice* forthcoming)

CROKE FAIRCHILD DUARTE & BERES LLC

180 N LaSalle Street, Suite 3400

Chicago, IL 60601

Telephone: (312) 650-8650

mfrisch@crokefairchild.com

Attorneys for The Aragon Shield Foundation

cc (via ECF):

John R. Hardin
Emily B. Cooper
Stephen M Hogan-Mitchell
PERKINS COIE LLP

*Attorneys for Plaintiff Patagon
Management LLC*

The request for an adjournment is GRANTED. The IPTC is rescheduled to December 11 at 1 pm in Courtroom 15A. The deadline for the parties' submissions is adjourned to December 4.

ASF's principal decision maker is granted permission to appear remotely.

SO ORDERED.



Arun Subramanian, U.S.D.J.

Dated: November 6, 2024